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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10-90, WT Docket No. 10-208; DA 18-427]

Connect America Fund; Universal Service Reform – Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: In this document, the Wireless Telecommunications Bureau and Wireline Competition Bureau (the Bureaus) reconsider certain aspects of the Mobility Fund Phase II (MF-II) challenge process procedures on their own motion and modify certain parameters for speed test measurements needed to file a successful challenge to an area that is initially deemed ineligible for MF-II support.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, Jonathan McCormack, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureaus' Order on Reconsideration (*MF-II Challenge Process Order on Reconsideration*), WC Docket No. 10-90, WT Docket No. 10-208, DA 18-427, adopted on April 30, 2018 and released on April 30, 2018. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's website at https://apps.fcc.gov/edocs_public/attachmatch/DA-18-427A1.docx. Alternative formats are

available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Final Regulatory Flexibility Certification (Certification) certifying that the requirements of the *MF-II Challenge Process Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities. The Certification is set forth in Section IV of the *MF-II Challenge Process Order on Reconsideration*, and is summarized below. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *MF-II Challenge Process Order on Reconsideration*, including the Certification, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Paperwork Reduction Act

The *MF-II Challenge Process Order on Reconsideration* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

Congressional Review Act

The Commission will send a copy of the *MF-II Challenge Process Order on Reconsideration* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A).

I. INTRODUCTION

1. On February 27, 2018, the Rural Broadband Auctions Task Force, in conjunction with the Wireline Competition Bureau and the Wireless Telecommunications Bureau (the Bureaus), released the *MF-II Challenge Process Procedures Public Notice*, 83 FR 13417, March 29, 2018, establishing the procedures to be used in the MF-II challenge process. The Bureaus reconsider certain aspects of those procedures on their own motion and increase the maximum distance between speed test measurements to 800 meters (approximately one-half of one mile)

and the associated buffer radius to 400 meters (approximately one-quarter of one mile).

II. BACKGROUND

2. In the *MF-II Challenge Process Procedures Public Notice*, the Bureaus determined, consistent with the Commission's decision in the *MF-II Challenge Process Order*, 82 FR 42473, September 8, 2017, that speed test measurements submitted to support and/or respond to a challenge to an area that is initially deemed ineligible for MF-II support must be no more than one-half of one kilometer (500 meters) apart from one another. The Bureaus also decided to assess challenges using a uniform grid with cells of one square kilometer and a "buffer" with a radius equal to one-half of the maximum distance parameter, i.e., one-quarter of one kilometer (250 meters). Subsequent to the release of the *MF-II Challenge Process Procedures Public Notice*, RWA submitted detailed data regarding the burden a challenger would experience as a result of these decisions.

III. DISCUSSION

3. Under Section 1.113(a) of the Commission's rules, 47 CFR § 1.113(a), the Bureaus may modify or set aside any action taken pursuant to their delegated authority on their own motion within 30 days of the publication of the action in the *Federal Register*. In this case, the *MF-II Challenge Process Procedures Public Notice* was published in the *Federal Register* on March 29, 2018, thus allowing the Bureaus until April 30, 2018 to reconsider those procedures. Based on new evidence in the record, the Bureaus now modify the requirement that speed test measurements must be taken no further than one-half of one kilometer apart from one another, which resulted in a buffer radius of one-quarter of one kilometer.

4. In the *MF-II Challenge Process Procedures Public Notice*, the Bureaus stated that they were not persuaded by the evidence in the record that adopting their proposal to use a one square kilometer grid cell and a buffer radius of one-quarter of one kilometer to assess challenges would create an "insurmountable burden." Upon consideration of new evidence in the record, which was unavailable at the time of our prior decision, the Bureaus are now persuaded

that applying a buffer radius of one-quarter of one kilometer may be unduly burdensome to some challengers. Since the Commission determined in the *MF-II Challenge Process Order* that the radius of the buffer will equal one-half of the maximum distance parameter, the Bureaus will require that speed test measurements be taken no further than 800 meters (eight-tenths of one kilometer) apart from one another, resulting in an associated buffer radius of 400 meters (four-tenths of one kilometer). These modified parameters will reduce the number of speed test measurements needed to file a successful challenge.

V. PROCEDURAL MATTERS

A. Congressional Review Act

5. The Commission will send a copy of the *MF-II Challenge Process Order on Reconsideration* to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

B. Paperwork Reduction Act Analysis

6. This document does not contain new or modified information collection requirements subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

C. Final Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for a notice-and-comment rulemaking proceeding, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern”

is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

7. As required by the RFA, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ICC Transformation FNPRM*, 76 FR 78383, December 16, 2011, the *2014 CAF FNPRM*, 79 FR 39195, July 9, 2014, and the *MF-II FNPRM*, 82 FR 13413, March 13, 2017 (collectively, *MF-II FNPRMs*). A Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was also filed in the *MF-II Challenge Process Comment Public Notice*, 82 FR 51180, November 3, 2017, in this proceeding. The Commission sought written public comment on the proposals in the *MF-II FNPRMs* and in the *MF-II Challenge Process Comment Public Notice*, including comments on the IRFAs and Supplemental IRFA. The Commission received three comments in response to the *MF-II FNPRM* IRFA. Those comments were addressed in the *MF-II Challenge Process Order* Final Regulatory Flexibility Analysis. No comments were filed addressing the other IRFAs or the Supplemental IRFA. The Commission included Final Regulatory Flexibility Analyses in connection with the *2014 CAF Order*, 79 FR 39163, July 9, 2014, the *MF-II Order*, 82 FR 15422, March 28, 2017, and the *MF-II Challenge Process Order*, and a Supplemental Final Regulatory Flexibility Analysis in connection with the *MF-II Challenge Process Procedures Public Notice*.

8. The *MF-II Challenge Process Order on Reconsideration* modifies the Bureaus' decision in the *MF-II Challenge Process Procedures Public Notice* that speed test measurements submitted to support and/or respond to a challenge to an area that is initially deemed ineligible for MF-II support must be no more than one-half of one kilometer (500 meters) apart from one another. The *MF-II Challenge Process Order on Reconsideration* increases the maximum distance parameter to 800 meters (approximately one-half of one mile) and, correspondingly, increases the associated buffer radius used to assess challenges to 400 meters (approximately one-quarter of one mile). By reducing the number of speed test measurements needed to submit a successful challenge, the Bureaus expect that these modified parameters will reduce the burden

on potential challengers. Therefore, the Bureaus certify that the requirements of the *MF-II Challenge Process Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

9. The Commission will send a copy of the *MF-II Challenge Process Order on Reconsideration*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *MF-II Challenge Process Order on Reconsideration* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the *Federal Register*.

VI. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 4(i), 254, 303(r), and 332 of the Communications Act of 1934, as amended, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 154(i), 254, 303(r), 332, 1302, and Section 1.113(a) of the Commission's rules, 47 CFR § 1.113(a), that the *MF-II Challenge Process Order on Reconsideration* is ADOPTED.

- Pursuant to Section 1.103 of the Commission's rules, 47 CFR § 1.103, the *MF-II Challenge Process Order on Reconsideration* shall become effective 30 days after the date of publication in the *Federal Register*.
- The Commission shall send a copy of the *MF-II Challenge Process Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

- The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *MF-II Challenge Process Order on Reconsideration*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Gary Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2018-10854 Filed: 5/21/2018 8:45 am; Publication Date: 5/22/2018]